IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Appeal from Order No.361 of 2005

Date of decision:- 20.11.2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:-20.11.2006 Initials of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Appeal from Order No. 361 of 2005

Uttaranchal Transport Corporation,
Through its Regional Manager
Uttaranchal Transport Corporation,
Kumaon Region, Nainital .....Appellant.

Versus

1. Smt. Farzana Begum W/o late Sri Ibrahim Ali
2. Imran Ali S/o late Sri Ibrahim
3. Jeesan Ali S/o late Sri Ibrahim
4. Kumari Kaynat D/o late Sri Ibrahim Ali
   All R/o Kidwai Nagar, Haldwani,
   District Nainital. .....Respondents

Delivery of Judgment :- 20th November,2006

Sri A.N. Sharma learned counsel for appellant.
Sri Z.U. Siddiqui learned counsel for respondents-claimants.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per :- Hon'ble J.C.S. Rawat, J.

1. This appeal under section 173 of the Motor Vehicles Act has been filed against the award dated 06.05.2005 passed by the Motor Accidents Claims Tribunal/IInd F.T.C., Nainital (hereinafter referred as 'Tribunal') in M.A.C.P. No.57/2004, whereby the learned Tribunal had awarded a sum of Rs.5,92,400/- as compensation against the appellant-Uttaranchal Transport Corporation. The appellant was directed to deposit the amount of compensation within one month from the date of award. In default of payment, the claimants-respondents would be entitled for interest thereon @ 7% per annum from the date of filing of the claim petition till the date of payment.

2. Brief facts for the case are that the claimants-respondents had filed a claim petition before the learned Tribunal for compensation of Rs.7,86,480/- alleging therein that on 27.02.2004 the deceased-Ibrahim Ali

was travelling from Nainital to Haldwani in the offending Bus No. UP06-4140, which was being driven rashly and negligently by its driver. When the offending bus reached near Naina Gaon it fell into a gorge due to rash and negligent driving of its driver. The deceased had sustained the grievous injuries on his person and he succumbed to his injuries. It was further pleaded that the deceased was working in the Jal Sansthan. He was aged about 40 years and was earning Rs.5,608/- per month at the time of incident. Hence, the claim petition had been preferred by the legal heirs and dependents of the deceased.

3. The opposite parties filed their written statements and contested the case. The Uttaranchal Transport Corporation had alleged in the written statement that the driver-Govind Singh of the offending bus was a skilled driver and the accident did not occur due to his rash and negligent driving. The appellant had further pleaded in his written statement that the accident occurred due to the fault of one unknown vehicle which came from the wrong side.

4. On the basis of the pleadings, the learned Tribunal framed necessary issues in the case and ultimately, the learned Tribunal had come to the conclusion that the offending bus fell into a gorge due to rash and negligent driving of its driver-Govind Singh and due to which the deceased sustained the injuries on his person and died. The learned Tribunal had assessed the age of the deceased as 40-42 years. It was further held that he was earning a sum of Rs.5,600/- per month or say Rs.67,200/- p.a. The learned Tribunal, after deducting 1/3rd income for personal expenses had fixed the dependency of the deceased as Rs.44,800/- per annum. The learned Tribunal had applied the multiplier of “13”

and the amount of compensation was assessed Rs.5,82,400/-. Apart this, Rs.5000/- for consortium and Rs.5000/- for last rites had been awarded to the claimants. Thus, the Tribunal had awarded a sum of Rs.5,92,400/- to the claimants as compensation. The appellant was directed to pay the aforesaid amount to the claimants within one month from the date of award. In default of payment of the compensation within the stipulated time, the claimants would also be entitled for interest thereon@ 7% p.a. from the date of filing of the claim petition till the date of payment.

5. Feeling aggrieved by this, the Uttaranchal Transport Corporation-appellant has preferred the present appeal.

6. Heard learned counsel for the parties and perused the record.

7. At the outset, it is pertinent to mention here that the respondents-claimants have also preferred the Cross Objection bearing No.8614/2005 against the impugned award for enhancement of the amount of compensation.

8. Learned counsel for the appellant contended that the learned Tribunal erred in holding that the driver of the offending vehicle was rash and negligent at the relevant time. It was further contended that the accident took place due to the fault committed by unknown vehicle which came from the wrong side and hit the offending bus. It was further contended that the learned Tribunal had not considered the evidence of the appellant on record and the findings recorded by the learned Tribunal are perverse and against the record. Learned counsel for the respondents refuted the contention and contended that the accident occurred due to rash and negligent driving of the driver of offending vehicle. It is admitted to both the parties that

on 27.02.2004 the offending vehicle met with an accident and fell into a gorge. The respondents had adduced the evidence that the offending vehicle fell into a gorge due to rash and negligent driving of its driver. The appellant had adduced the evidence that the accident occurred due to the fault of one unknown vehicle which came from wrong side. In order to save the unknown vehicle, the offending vehicle met with an accident and fell into a gorge. The respondents had adduced the evidence of the widow of the deceased Smt. Farzana Begum as PW1. The appellant had produced the copy of the statement of Sri S.D. Kotwal-conductor of the offending vehicle. The said statement was recorded in Motor Accident Claim Petition No.77/2004 Smt. Vimal Arya Vs. Uttaranchal Transport Corporation Ltd. The said case also pertains to the same accident. It is revealed from the statement of S.D.Kotwal that the driver of the offending vehicle had used brake while negotiating the bend (turn) on the road at the spot. The offending vehicle was going from Nainital to Haldwani. The hillock was on the left side of the offending bus and the gorge in which the offending vehicle fell was on the right side of the offending vehicle. In this situation, the offending vehicle had to run on the left side of the road. If the offending bus was on the left side adjacent to hill, it would not fell into the gorge which was on the right side of the road. It has rightly been said that the witnesses may lie, but the circumstances will not. If the driver of the offending vehicle was on the left side of the road, he tried to negotiate the turn on the road and he tried to save the other vehicle coming on the wrong side in front of the offending vehicle, the vehicle would not fall into the gorge if it was not being driven rashly and negligently.

If the driver of the offending vehicle was on a slow speed and he slightly took turn it was not possible to lose his control over the steering of offending vehicle. If the vehicle was not being driven rashly and negligently, the accident would not have occurred. Thus, there was sufficient space on the road itself to negotiate such situation. Therefore, the learned Tribunal was justified in holding that the driver of the offending vehicle was rash and negligent at the time of accident and due to which the accident took place and the appellant was liable to pay the compensation.

9. Learned counsel for the appellant further contended that the quantum of award was excessive and exorbitant. It was further contended that the Tribunal had applied the multiplier on the basis of hypothetical calculations. It was further contended that the rate of interest awarded by the Tribunal was also on the higher side and as such the Tribunal had failed to appreciate the evidence on record. Learned counsel for the claimants refuted the contention. It was further contended that as the deceased was 40 years of age at the time of accident, the multiplier of '15' should have been applied by the learned Tribunal. But, the learned Tribunal had applied the multiplier of '13' instead of '15' which is against the statute. It was further contended on behalf of the respondents that the compensation awarded by the learned Tribunal was not just and reasonable in view of the circumstances of the case. It was further contended that the claimants were entitled for Rs. 7,86,480/- as compensation alongwith interest @ 12% from the date of filing of the claim petition. It was further contended that the Tribunal had erred in not awarding the interest from the date of filing of the claim petition till the payment is made. It was further

contended that the learned Tribunal had not awarded any amount towards the loss of estate. Lastly, learned counsel for the respondents contended that the compensation awarded by the Tribunal is not sufficient and it may be enhanced to the tune of Rs.7,86,480/- alongwith interest @ 12% p.a. from the date of filing of claim petition.

10. The claimants had pleaded that the deceased was employed in Jal Sansthan and was earning Rs.5608/- per month. The claimants had also filed the salary certificate of the deceased. No evidence in rebuttal had assessed the income of the deceased as Rs.5600/- p.m or say Rs.67,200/-p.a. Considering the dependency and age of the deceased, the Tribunal after deducting 1/3rd income of the deceased for personal expenses had rightly assessed the dependency as Rs.44,800/- p.a.

11. While calculating the compensation under section 166 of the Motor Vehicles Act the Court has to see whether the compensation is just and reasonable depending upon the facts and circumstances of each case. The Hon'ble Supreme Court in **Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya reported in J.T. 2005 (4) SC 531** has held that:-

> *"8. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the*

dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master since there are so often many imponderables. In every case it is the overall picture that matters, and the court must try to assess as best as it can the loss suffered."

12. The Tribunal had assessed the age of the deceased as 40-42 years and applied multiplier of "13". In the case of **S. Rajapriya (Supra)** as the deceased was 38 years of age, the multiplier of 16 was applied by the Tribunal. The Hon'ble Supreme Court while assessing the just and reasonable compensation has held that the Tribunal had adopted higher multiplier of '16' at the age of 38 years. The Hon'ble Supreme Court has further held that the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. It has been held that the appropriate multiplier would be '12' and not '16'. In the case in hand, considering the dependency and age of the

deceased the learned Tribunal was justified in applying the multiplier of ‘13’ and not ‘15’.

13. The Tribunal had directed the appellant to deposit the awarded amount within one month from the date of award and in case of default the appellant would also pay interest @ 7% per annum from the date of filing of the claim petition till the date of payment. We are of the view that the learned Tribunal has fell into error in not awarding the any interest on the amount of compensation to the claimants from the date of filing of the claim petition till the date of deposit of the amount of compensation before the Tribunal. The respondents/claimants are entitled to get interest @ 7% p.a. from the date of filing of the claim petition till the date of deposit of the amount of compensation before the learned Tribunal.

14. It is pertinent to mention here that the learned Tribunal fell in error in not awarding any amount of compensation for the loss of estate to the claimants/respondents. We, therefore, award a sum of Rs.5000/-(Rupees five thousand only) to the claimants for the loss of estate.

15. In view of the foregoing discussion, the appeal lacks merit and liable to be dismissed. The appeal is dismissed. Cross Objection of the respondents is liable to be partly allowed. Cross Objection is partly allowed to the extent that the claimants shall also be entitled to get an amount of Rs.5000/- for the loss of estate. The claimants/respondents would also get interest @ 7% per annum from the date of filing of claim petition till the date of deposit of amount for compensation before the

learned Tribunal. The impugned award passed by the learned Tribunal is modified to the above extent. No orders as to costs.

16. Consequently, an amount of Rs.25,000/- which has already been deposited by the appellant before this Court shall be remitted immediately to the M.A.C.T. concerned.

(J.C.S.Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 20th November,2006
LSR